Nos. 01-950, 01-1018

FEB 24 2003

In The
Supreme Court of the United States

HILLSIDE DAIRY INC., A&A DAIRY, L&S DAIRY, AND MILKY WAY FARMS,

Petitioners,

v.

WILLIAM J. LYONS, JR., SECRETARY, DEPARTMENT OF FOOD & AGRICULTURE, STATE OF CALIFORNIA, AND ROBERT TAD BELL, UNDERSECRETARY, DEPARTMENT OF FOOD & AGRICULTURE, STATE OF CALIFORNIA,

Respondents.

PONDEROSA DAIRY, PAHRUMP DAIRY, ROCKVIEW DAIRIES, INC., AND DARREL KUIPER AND DIANE KUIPER, d/b/a D. KUIPER DAIRY,

Petitioners,

v.

WILLIAM J. LYONS, JR., SECRETARY, DEPARTMENT OF FOOD & AGRICULTURE, STATE OF CALIFORNIA, AND ROBERT TAD BELL, UNDERSECRETARY, DEPARTMENT OF FOOD & AGRICULTURE, STATE OF CALIFORNIA,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF STATES OF NEVADA, MINNESOTA, MONTANA, OREGON, WASHINGTON AND WISCONSIN AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Amici will address the following question:

Whether 7 U.S.C. § 7254 exempts California's pricing and pooling regulations from scrutiny under the Commerce Clause.

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BRIEF OF STATES OF NEVADA, MINNESOTA, MONTANA, OREGON, WASHINGTON AND WISCONSIN AS AMICI CURIAE IN SUPPORT OF PETITIONERS

The States of Nevada, Minnesota, Montana, Oregon, Washington and Wisconsin hereby file the following Brief of Amici Curiae in Support of Petitioners.

INTERESTS OF AMICUS CURIAE

The States of Nevada, Minnesota, Montana, Oregon, Washington and Wisconsin have an interest in maintaining orderly marketing conditions and the reasonable stability of production of raw milk, in order to ensure that fresh local supplies of raw milk are available year-round to meet the fluid milk demand in their respective states. Pursuant to Supreme Court Rule 37.4, by and through their Attorneys General, the above-named States submit this Amicus Curiae Brief in support of Petitioners' efforts to reverse the summary judgment entered against Petitioners by the District Court and affirmed by the United States Court of Appeals for the Ninth Circuit.

The interests of each state joining this brief vary slightly, but at the core, each of these states support the reversal and remand of the lower court ruling that § 144 of the Federal Agriculture Improvement and Reform Act of 1996 (hereinafter "1996 Farm Bill") (codified at 7 U.S.C. § 7254) provides California's three separate milk regulation programs with blanket immunity from the dormant Commerce Clause. It is because the law so clearly demonstrates the error of the Ninth Circuit's affirmance of the District Court's finding that a blanket Commerce Clause

exemption exists, that our states have concluded that we can address the straightforward legal issue, while also demonstrating the interests of these several states in the outcome of this litigation, without unduly burdening the resources of this Court with multiple briefs.

As discussed more fully below, the income of every dairy farmer from the border states of Oregon and Nevada to the Midwestern states of Minnesota and Wisconsin is adversely affected by California's expanding production of milk and dairy products. If California's expansion were due to good competition and ingenuity, the States would not be filing this brief. However, in recent years, in order to compensate for losing the luxury of "geographic isolation," California has begun to employ policies that are prohibited by the Commerce Clause. These policies have provided the California dairy industry with an improper competitive advantage over the dairy economies of every other state in the commercial union.

Nevada and Oregon dairy farmers who directly engage in raw milk transactions with California, are faced with direct interference by California in their economic transactions with California processors. In addition, California's protectionist policies subsidize and encourage milk production that is not tempered by the law of supply and demand. As a result, for the rest of the signatory states (as well as the border states), overproduction by California dairy farmers is depressing the prices received by their dairy farmers. Even if the 1997 amendments are not ultimately found to violate the dormant Commerce Clause, the signatory states have an interest in preventing the judicial expansion of § 144 of the 1996 Farm Bill. The specific interests of the signatory states are as follows:

A. States Whose Dairy Farmers Directly Engage in Raw Milk Transactions With California Processors Will Be Injured If California Is Permitted To Insulate California Dairies From Interstate Milk Competition.

Nevada has declared a public interest in the production and distribution of fluid milk. NRS 584.390. In the exercise of its police powers and in furtherance of the health and welfare of its citizens, Nevada enacted legislation for the stabilization and marketing of fluid milk. NRS 584.325 to NRS 584.690 inclusive. Nevada enacted this legislation to ensure an in-state supply of fresh milk for Nevada citizens and also to ensure a competitive market for Nevada dairy farmers.

Nevada is interested in this matter because the 1997 amendments to California's pooling plan enacted by the California Department of Food and Agriculture (hereinafter "CDFA"), impose a discriminatory burden on Nevada dairy farms such that Nevada's goals of promoting the production and marketing of fluid milk through unburdened interstate competition are adversely affected.

Nevada's dairy producers are directly affected because those dairies transport their raw milk to California for processing and the price those dairies receive from the California processors for the raw milk is now controlled by California's economic pooling and pricing regulations. California's economic pooling and pricing regulations treat out-of-state producers differently than in-state producers. In-state California producers receive a guaranteed uniform minimum price for all the milk they produce. Out-of-state producers do not. In-state California producers receive the true benefits of California's economic pooling system (the means by which producer revenue is shared

and distributed). Out-of-state producers do not. (Gruebele Supp. Aff. ¶ 25, C.A. E.R. Tab 11N at 9).[1] Thus, the 1997 amendments enacted by CDFA discriminate against out-of-state producers and have harmed and will continue to harm Nevada consumers and Nevada dairy farms.

Specifically, Nevada opposes the Ninth Circuit's overbroad interpretation of § 144 of the 1996 Farm Bill that suggests that California somehow has been granted the right to directly burden and discriminate against Nevada dairies in this manner or in any other matter in the future. Although the court did not analyze the arguments pertaining to whether or not the 1997 amendments violated the Commerce Clause, Petitioners provided the court with undisputed evidence that CDFA adopted the 1997 amendments with the intent of discouraging shipments of raw milk from out-of-state (Dorbin Aff. ¶ 6, C.A. Supp. E.R. Tab 4 at 1-2),[2] and demonstrated that the 1997 amendments imposed direct, differential and discriminatory burdens on out-of-state dairy farmers. (Gruebele Aff. at 6, lines 4-9 and at 8-9, ¶¶ 1-7, C.A. E.R. Tab 11M at 6, 8-9. Gruebele Supp. Aff. ¶¶ 25 and 28, C.A. E.R., Tab 11N at 11-12).

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[1] Citations to "C.A. E.R." are to the Hillside and Ponderosa Appellants' Joint Excerpts of Record filed in the United States Court of Appeals for the Ninth Circuit on December 23, 1999 (Nos. 16981, 16982).

[2] Citations to "C.A. Supp. E.R." are to the Hillside and Ponderosa Appellants' Joint Supplemental Excerpts of Record filed in the United States Court of Appeals for the Ninth Circuit on April 10, 2000 (Nos. 16981, 16982).

If allowed to stand, the court's ruling would open the door for destructive trade practices. Pursuant to the court's ruling, California could completely ban the sale of Nevada milk. For example, CDFA could make a processor's pool contribution on out-of-state milk so prohibitive that California processors could no longer afford to receive milk from out-of-state. See, Brief of Amicus Curiae in Support of Petition for Writ of Certiorari by the Dairy Institute of California.

California is a natural market for Nevada raw milk. In many cases, raw milk produced in Nevada is shipped to California for processing and actually returned to Nevada in packaged form for consumption. (Witt Decl. ¶¶ 4-5, C.A. Supp. E.R. Tab 1 at 2). Based on statistics received from the Nevada Dairy Commission, in 2001 and 2002, Nevada dairy producers shipped 32,835,829 and 39,506,747 pounds of raw milk to California. This amounted to 68% in 2001 and 78% in 2002 of Nevada's total milk production.

Before the 1997 amendments, it was economical and competitive for Nevada dairies to transport raw milk to California for processing before the finished dairy product was eventually transported back to Nevada for consumption. Because of this mutually beneficial arrangement, Nevada dairies relied to their detriment on the unburdened lanes of commerce and Nevada did not develop in-state raw milk processing plants. In addition, several dozen Nevada dairies invested in the development of markets in California instead of alternative markets. *See e.g.*, (Witt Decl. ¶¶ 4-5, C.A. Supp. E.R. Tab 1 at 2). Now, after the enactment of the protectionist 1997 amendments, and the Ninth Circuit's interpretation of § 144 of the 1996 Farm Bill, Nevada dairies are earning less income, California in-state dairies are receiving more money in their

pooling checks, and the health of Nevada's dairy industry is at risk because California's dairy industry is free to engage in economic protectionism having been insulated from Commerce Clause challenge. (Witt Decl. ¶ 12, C.A. Supp. E.R. Tab 1 at 2; Olsen Decl. ¶ 8, C.A. Supp. E.R., Tab 2 at 2).

Today, under the court's ruling, CDFA has the authority to make it economically infeasible to continue to ship the above-stated quantities of milk to California. If CDFA takes these steps, then many of Nevada's producers will go out of business, leaving Nevada without a local supply of fresh milk.

This type of harm has already occurred. One of the petitioners, Milky Way Farms, closed its business as a result of the burdens on interstate commerce placed by CDFA. (Witt Decl. ¶¶ 15-16; C.A. Supp. E.R., Tab 1 at 3).

Perhaps more important, while discouraging milk shipments from out-of-state dairies, California has encouraged its in-state dairy producers to expand production. Testimony of Dr. Robert Yonkers before U.S. Dept of Agric. Law Judge James W. Hunt, Hearing on Class III and IV Prices, Transcript at 256 (May 8, 2001) *available at*<http://www.ams.usda.gov/dairy/exh_hear.htm>(showing explosive growth in California milk production relative to other states between 1980 and 1999). By this action, California has depressed milk and milk product prices nationwide, thereby causing farm foreclosures and milk cow slaughter. Economic Research Service, USDA, *Livestock, Dairy & Poultry Outlook*/LDP-M-98/August 15, 2002 at 6 <www.ers.usda.gov/publications/so/>; National Agricultural Statistics Service (NASS), USDA, *Milk Production* (monthly 1997-2002) www.usda.gov/nass/; NASS,

USDA, *U.S. Dairy Herd Structure* (Sep. 26, 2002) <http://jan.mannlib.cornell.edu/reports/nassr/livestock/dairy-herd/specda02.pdf>; Kenneth Baily, *Dairy Market Outlook* (Pennsylvania State University (Nov. 22, 2002) <http://dairyoutlook.aers.psu.edu> ("More milk, more cheese, more butter, and lower milk prices!").

Nevada is interested in preserving the benefits of unobstructed commerce between states including California and Nevada. Nevada takes seriously the mandate of the dormant Commerce Clause and endeavors to promulgate and administer regulations in a manner that does not place parochial interests ahead of national interest in unobstructed interstate commerce.

B. States That Do Not Regularly Engage in Raw Milk Transactions With California Are Nevertheless Directly and Adversely Impacted If California Is Permitted To Insulate California Dairies From Interstate Milk Competition.

Like Nevada and Oregon, the other amici states also have declared public interests and enacted legislation in support of their state dairy industries. *See, e.g.,* Minn. Stat. sec. 17.03, subd. 1 (2002); Mont. Code Anno., § 81-23-102 (2001); Rev. Code Wash. (ARCW) § 15.44.900 (2001); Wis. Stat. §§, 93.07(17), 93.40 and 165.09.

Every state with a dairy industry outside of the state of California is directly and adversely impacted by California's economic pooling and pricing regulations in an important way additional to the harm suffered by states that engage in direct raw milk transactions, such as Nevada and Oregon. Major dairy states, like Minnesota and Wisconsin, as well as each of the other states joining

this brief, have experienced the harmful effects of California's increasingly overt acts to insulate California's dairy industry from interstate milk competition.

California now leads the country in milk production. California produced 58% more milk in 2002 than the second leading dairy state, Wisconsin. California increased its milk production by 157% between 1980 and 2002, similarly, while total United States milk production increased only 35% during the same period. Crop Reporting Bd., Statistical Reporting Serv., U.S. Dept. of Agric., Milk: Final Estimates for 1979-82, Statistical Bulletin No. 722, at 27; National Agric. Statistics Service, Agric. Statistics Bd., U.S. Dept. of Agric., Milk Production, at 2 (Feb. 14, 2003).

California's protectionist approach to its milk pooling and pricing regulations allows it to distort national forces of supply and demand and competition. Because California so dominates the United States dairy economy, its ability to protect its dairy industry de facto shifts economic burdens of supply and demand onto its competitor dairy states.

This occurs because of the complex regulatory mechanisms that govern milk pricing and pooling. The interstate nature of the dairy industry necessitated the intervention of federal law to regulate the dairy industry in the 1930's. That is even more true today due to the extensive interstate movement of milk and dairy products. Now, however, the national impact of California's localized regulatory scheme is exacerbated by the fact that the United States Department of Agriculture (hereinafter, "USDA") regulates minimum farm milk prices in most states through the federal milk marketing order program authorized under the Agriculture Marketing Agreement Act of 1937, 7

U.S.C. 601 *et seq.* (the "Agriculture Marketing Act"): in 2002, 73% of all United States milk.

Specifically, the protective web of California's regulations allows California producers to price their milk used in nationally marketed cheese and butter significantly lower than required under the federal milk marketing orders that govern pricing in other dairy states. Conversely, California milk used in regionally marketed fluid milk products is priced relatively higher than federal milk marketing orders dictate. The result of California's system of cross-subsidization therefore has been to increase milk production beyond what uniformly regulated conditions would have generated. More milk production means more cheese and butter, and, thus lower prices for those products and for milk on which dairy farmers throughout the country rely for their livelihoods.

California designed its milk pricing program to maintain misalignment. California's objective is evidenced by the 1997 ratemaking decision from which the present case originates, where California Undersecretary of the Department of Food and Agriculture A.J. Yates stated, "*[I]t is beneficial to the California dairy industry to maintain its comparative advantage in selling manufactured dairy products.*" Statement Of Determination And Order Of The Secretary Of Food And Agriculture Regarding Proposed Amendments To The Stabilization And Marketing Plans For Market Milk For The Northern And Southern California Marketing Areas Based Upon A Public Hearing Held On September 3, 1997 (Calif. Dept. of Food & Agric. Oct. 10, 1997) (App., *infra*, 2-3). Yates' statement documents California's deliberate design to use its pooling and pricing program for competitive advantage.

The most egregious aspect of California's protectionist regulatory scheme is the fact that federal milk prices established by USDA must be aligned, by design or by default, with those of California. If USDA fails to design milk pricing in relation to California, other states governed by those USDA regulations lose market share to California. Agri-Mark Dairy Cooperative, Comments of Agri-Mark Dairy Cooperative at 6 (Jan. 25, 2002) <http://www.ams.usda.gov/dairy/rec_dec/comment_12.pdf>.

Even if USDA chooses to align its regulated milk prices for cheese and butter uses with California's regulated prices, then USDA must bottom out prices to California levels at the expense of all United States dairy farmers. By design or by default, as a result, the 89,490 dairy farmers in other states suffer significant economic hardship each year from lower milk prices driven by California's industry dominance and protectionism. National Agric. Statistics Service, Agric. Statistics Bd., U.S. Dept. of Agric., Milk Production, at 16 (Feb. 14, 2003).

For example, USDA held public hearings in May 2000 to consider amendments to the milk order price formulas for Class III milk (used in cheese) and Class IV milk (used in butter and nonfat dry milk). In January 2001, the revised formulas issued by the USDA were subsequently enjoined by a U.S. District Court pursuant to legal challenge which argued that the revised formulas raised the Class III price too high relative to the California regulated price. *Select Milk Producers, Inc. v. Glickman*, No. 01-CV-60 (D.C. Jan. 31, 2001). In its subsequent final rule, USDA significantly lowered Class III prices to reduce the Class III price gap between the federal order and the California regulation. Milk in the Northeast and Other Marketing Areas, 67 Fed. Reg. 67,906 (Nov. 7, 2002) (to be codified at

7 C.F.R. pts. 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135); Milk in the Northeast and Other Marketing Areas, 68 Fed. Reg. 7,063 (Feb. 12, 2003).

The crux of the present case, therefore, is to end California's ability – now and in the future – to hide behind a clearly erroneous and illegal Commerce Clause exemption and to end the resulting unfair competitive effects on other dairy producing states. Any interpretation of § 144 of the 1996 Farm Bill to exempt California from the Commerce Clause will simply allow California to continue its conscious and deliberate attempt to cross-subsidize between fluid and manufacturing milk prices in order to encourage the expansion of its cheese and other dairy product manufacturing to the detriment of other dairy states.

SUMMARY OF ARGUMENT

Section 144 of the 1996 Farm Bill provides:

> Nothing in this Act or any other provision of law shall be construed to preempt, prohibit, or otherwise limit the authority of California, directly or indirectly, to establish or continue to effect any law, regulation, or requirement regarding:
>
> (1) the percentage of milk solids or solids not fat in fluid milk products sold at retail or marketed in the State of California; or
>
> (2) the labeling of such fluid milk products with regard to milk solids or solids not fat.

Nothing in the text of this statute grants the three separate programs involved in California's milk regulation

system immunity from Commerce Clause scrutiny. Even if a Commerce Clause exemption has been granted, neither the language in § 144 of the 1996 Farm Bill, nor any expression articulated by Congress evidences an intention to extend the perceived exemption to "pooling and pricing" laws. An exemption respecting standards of identity (pertaining to nutritional content) and labeling is unrelated to pooling and pricing laws that are clearly economic regulations. Indeed, the California program that regulates the identity and labeling of processed and packaged fluid milk products is in a different program than the two programs that regulate the pooling and pricing of raw milk, much like the federal government regulates milk product composition through the Food and Drug Administration while milk economic regulations are administered by the U.S. Department of Agriculture.

It is the overbroad interpretation of § 144 to include "pooling and pricing" laws, first articulated by Judge Reinhardt in *Shamrock Farms v. Veneman*, 146 F.3d 1177 (9th Cir. 1998), that allows CDFA to implement discriminatory, protectionist laws that burden interstate commerce between California and Nevada, Minnesota, Montana, Oregon, Washington, and Wisconsin.

The issue raised in this case is whether the § 144 exemption allows California to discriminate in favor of California dairy producers to the economic disadvantage of other state dairy producers. If § 144 provides any Commerce Clause exemption at all, the holding in *Shamrock* should be limited to exemptions for milk composition and labeling and not expanded to allow exemptions for economic "pooling and pricing" regulations.

ARGUMENT

Every state in the commercial union has an interest in unburdened interstate trade, as guaranteed by the U.S. Constitution. Thus, to guarantee unburdened interstate trade, each amicus state strongly opposes the judicial expansion of § 144 of the 1996 Farm Bill to confer blanket Commerce Clause immunity to all three of California's separate milk regulation programs. The court's overly broad interpretation of § 144 is improper and should be reversed because that holding has placed and threatens to place additional impermissible burdens on the interstate commerce of raw milk.

The Commerce Clause authorizes Congress to regulate commerce among the several states. U.S. Const. Art. I, § 8, cl.3. When Congress fails to exercise the full extent of its power to regulate interstate commerce, states are free to regulate if their regulations are not discriminatory in nature, or impose undue burden on interstate commerce. *Lewis v. BT Investment Managers, Inc.*, 447 U.S. 27, 36 (1980).

Although the Commerce Clause "limits the power of the States to erect barriers against interstate trade," "Congress may authorize the States to engage in regulation that the Commerce Clause would otherwise forbid." *Maine v. Taylor*, 477 U.S. 131, 137, 138 (1986). If state regulations are nothing more than economic protectionism they are invalid. *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 471 (1981). Even when state regulation imposes only an incidental burden it can still be unconstitutional if it imposes an excessive burden on interstate commerce. *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

The court's overbroad interpretation of § 144 first announced in *Shamrock Farms v. Veneman*, 146 F.3d 1177

(9th Cir. 1998) should be reversed because: (1) the text of § 144 did not grant California any exemption at all from Commerce Clause scrutiny; and (2) Congress did not make the perceived Commerce Clause exemption "unmistakably clear."

1. The text of § 144 did not grant California any exemption at all from Commerce Clause scrutiny.

Section 144 does not grant California any immunity from Commerce Clause scrutiny for any of CDFA's laws and regulations. This understanding is based upon the text of the statute at issue. Specifically, § 144 provides:

> Nothing in this Act or any other provision of law shall be construed to preempt, prohibit, or otherwise limit the authority of California, directly or indirectly, to establish or continue to effect any law, regulation, or requirement regarding:
>
> (1) the percentage of milk solids or solids not fat in fluid milk products sold at retail or marketed in the State of California; or
>
> (2) the labeling of such fluid milk products with regard to milk solids or solids not fat.

There is no mention of the Commerce Clause anywhere in this statute. Indeed, if we read § 144 in the context of the statute within which it is found, the language grants California an exemption in regards to any law, regulation, or requirement found within "this Act" or in other words, the 1996 Farm Bill.

While it is true the Act provides an exemption for "any other provision of law," there is no precedent for

construing "any other provision of law" as anything other than a reference to other statutory law.

Each state respects the Commerce Clause and the original intent of the framers of the Constitution to prohibit individual states from placing burdens on interstate commerce to protect their own industries. Certainly, any immunity from Commerce Clause scrutiny that would allow one state to harm or burden other states should be express and not inferred. However, § 144 does not mention any Constitutional immunities, nor any Commerce Clause immunities. There is no precedent for construing "any other provision of law" as anything other than a reference to other statutory law. Even if this language could also be construed to mean the Constitution, treaties and judicial decisions, it would then, at best, be ambiguous, and for that reason also fail to grant Commerce Clause Immunity. Accordingly, under the clear text of the statute, and by an absence of any granting text, California's claim to a Commerce Clause immunity should be denied, and the court's overbroad interpretation of the statute granting the same should be reversed.

2. Even assuming that § 144 granted Commerce Clause immunity for some California laws, that immunity was not granted to the economic "pooling and pricing" regulations because Congress did not make the perceived Commerce Clause exemption "unmistakably clear."

Because of the important role the Commerce Clause plays in protecting the free flow of interstate trade, this Court has exempted state statutes from the implied limitations of the Clause only when the congressional

direction to do so has been "unmistakably clear." *Maine v. Taylor*, 477 U.S. 131, 138-39 (1986).

This Court has "stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut National Bank v. Germain*, 503 U.S. 249, 253-54 (1992). When the words of a statute are unambiguous, the judicial inquiry is complete.

As provided above, the language of the statute provides exemption for milk composition (nutrition) and labeling standards. Nothing in the text of § 144 appears to grant California an exemption for economic pooling and pricing regulations. This is reinforced by the fact that § 144 directly addresses regulations for a specific kind of milk – packaged (meaning necessarily processed) fluid milk. Whereas, the pooling and pricing regulations deal with a different kind of milk – raw unprocessed milk that is used to make more than just fluid milk.

In keeping with this Court's admonition to give effect to the plain meaning of statutes, California's exemptions should be limited to the unambiguous words contained in the statute. The statute unambiguously provided exemptions for milk composition (nutrition) and labeling standards only. As such, § 144 cannot possibly be extended to provide California with exemptions for economic pooling and pricing regulations that are not provided in the statute.

The court's overbroad interpretation of § 144 should be reversed because there is no unmistakable, clear language from Congress to support the court's interpretation.

CONCLUSION

California's economic pooling and pricing regulations discriminate against out-of-state dairy farmers and violate the Commerce Clause. This was the stated intent of the drafters of the 1997 amendments. To shield these regulations, that would otherwise be struck down as unduly burdening commerce between the states, California relies upon a perceived exemption from the Commerce Clause.

The District Court decision and the Ninth Circuit Court affirmation of that decision allowing California such Commerce Clause immunity should be reversed and the matter remanded because Congress granted no such immunity. To allow California to continue enacting protectionist laws and regulations shielded from Commerce Clause scrutiny harms the interstate commerce between several states and California.

Respectfully submitted,

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September 3, 1997 Hearing Results

STATEMENT OF DETERMINATION AND ORDER OF THE SECRETARY OF FOOD AND AGRICULTURE REGARDING PROPOSED AMENDMENTS TO THE STABILIZATION AND MARKETING PLANS FOR MARKET MILK FOR THE NORTHERN AND SOUTHERN CALIFORNIA MARKETING AREAS BASED UPON A PUBLIC HEARING HELD ON SEPTEMBER 3, 1997

SUMMARY: The determination to make amendments to the current Stabilization and Marketing Plans for Northern and Southern California (Plans) is based on testimony and evidence received at a public hearing held on September 3, 1997 in Fresno, California. These determinations are further based on written comments submitted prior to the close of the hearing record. The statement of determination will be discussed in the following Sections:

I. Introduction: a broad outline of statutes and facts giving rise to the hearing.

II. Background: an overview of regulation of the dairy industry.

III. Statutory Criteria for Establishing and Amending the Stabilization and Marketing Plans and the Pooling Plan: an analysis of the criteria set forth in the Food and Agricultural Code for establishing or amending the Stabilization and Pooling Plans.

IV. Current Industry Conditions Relative to the Statutory Criteria: Current information concerning the condition of the dairy industry in California.

V. Proposals and Testimony: a review of the hearing record.

VI. Review of Previous Hearings: a review of the last hearings held on this topic and the determinations made as a result of those hearings.

VII. Analysis of the Hearing Record: a discussion of the changes to the Plans as proposed in the hearing record.

VIII. Findings of the Department of Food and Agriculture.

IX. Order of the Secretary of Food and Agriculture.

SECTION I

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rather conservative approach to making changes in pricing policy for the time being.

Class 1, 2 and 3 dairy product markets are regional in scope. If Class 1, 2 and 3 farm prices are too high, the competition to replace California products would be limited to milk supply areas in the West. Classes 4a and 4b utilize 66 percent of all pooled milk. Classes 4a and 4b perform important market clearing functions. Class 4a and 4b products compete on a national and international market. Thus, setting appropriate Class 4a and 4b prices is extremely important.

California produces more milk than any other state. It has a dominant position as the nation's supply leader. California has a steady trend of continual production increases, with the amount of the annual increase larger than the total production of many other states. Thus, it is beneficial

to the California dairy industry to maintain its comparative advantage in selling manufactured dairy products. To do otherwise would reduce California's comparative advantage to the benefit of out-of-state processors.

Those supporting higher Class 4a and 4b prices and lower manufacturing cost allowances argue that total production would be forced downward by the curtailment of processing plant capacity. The experience of the 1980's has demonstrated that California farmers will produce the maximum milk needed to fulfill the fall and winter needs (normal seasonal peak in commercial demand, and seasonal low in production) and will ship surplus milk production (amount in excess of processing capacity) to out-of-state Class 4a and 4b processors at less than federal or state minimum prices in the spring and summer (seasonal low in commercial demand and high in milk production).

By doing so, California dairy farmers maximize their total revenues, but also provide ample milk supplies at lower cost to out-of-state processors. The out-of-state processors who received the surplus milk are afforded a cost advantage to compete in the national market. The result puts added pressure on lowering national milk prices.

Given its comparative economic advantages in milk production, it is not mere coincidence that California has grown into the largest dairy state in the nation while its minimum milk prices have been lower than the other major milk production regions of the country. California's basic commodities have largely been successful in the national market based on their ability to compete in price. Barring fundamental changes in the near future, the viability of the California dairy industry's future remains with its ability to compete. Until milk production levels

remain constant or the California dairy industry becomes more reliant on value added products, this will not change.

It makes little economic sense to raise the raw product to the point that the California products manufactured from California milk cannot be sold or must be sold at an economic loss. California dairy farmers would lose in the long run.

Summary

The Departmental determinations are compared with the various industry proposals in *Attachment A-1* and summarized below:

Changes Rejected: